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15 UNITED STATES DISTRICT COURT
16
17 FOR THE
18
19 CENTRAL DISTRICT OF CALIFORNIA

20 **HILDA L. SOLIS**,*
21 Secretary of Labor,
22 United States Department of Labor,

23 Plaintiff,

24 v.

25 **BEST MIRACLE CORPORATION**,
26 A California corporation et al,

27 Defendants.

Case No. SACV08-00998 CJC(MLGx)

**PLAINTIFF'S MOTION IN
LIMINE (#2) TO PRECLUDE
DEFENDANTS FROM INQUIRING
ABOUT THE SOCIAL SECURITY
NUMBERS OF NON-PARTY
EMPLOYEE WITNESSES**

The Honorable Cormac J. Carney

Pretrial Conference: February 8, 2010
Time: 3:30 p.m.
Courtroom: 9B

Trial Date: February 16, 2010

28 * Pursuant to Rule 25(d)(1) of the Federal Rules of Civil Procedure, the caption of this action has been amended to reflect the appointment of Secretary Solis.

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD, PLEASE
TAKE NOTICE that Plaintiff Hilda L. Solis, Secretary of Labor, U.S. Department of Labor (“Plaintiff” or the “Secretary”) will present the following motion to the Court at the U.S. Courthouse, 411 West Fourth Street, Santa Ana, CA 92701 in courtroom 9B at 3:30 pm on February 8, 2010.

This motion has been made following a conference of counsel pursuant to Local Rule 7-3, which took place on December 22, 2009 and December 29, 2009.

The Secretary hereby moves in limine to preclude Defendants Best Miracle Corporation, Thuy Thi Le, and Toan Van Nguyen (collectively, “Defendants”) from inquiring about, the Social Security numbers of non-party employee witnesses during trial. This motion is made on the grounds that any perceived probative value from inquiring into an employee’s Social Security number is substantially outweighed by the danger of unfair prejudice. See Fed. R. Evid. 403.

I. All Employees Enjoy the Rights and Protections Afforded by the FLSA.

It is well-settled that all employees, regardless of immigration status, are protected by the minimum wage and overtime provisions of the Fair Labor Standards Act of 1938 (the “FLSA”). See, e.g., Patel v. Quality Inn South, 846 F.2d 700, 706 (11th Cir. 1988); Singh v. Jutla & C.D. & R’s Oil, Inc., 214 F. Supp. 2d 1056, 1058-59 (N.D. Cal. 2002); In re Reyes, 814 F.2d 168, 170 (5th Cir. 1987); Flores v. Albertsons, Inc., 01-CV 00515(AHM), 2002 WL 1163623 at *5 (C.D.Cal. Apr. 9, 2002); Montoya v. S.C.C.P. Painting Contractors, Inc., 530 F. Supp. 2d 746, 751 (D. Md. 2008).

II. Inquiry Into Social Security Numbers is a Roundabout Way of Inquiring as to Employees’ Immigration Status and Any Perceived Probative Value Derived Therefrom is Substantially Outweighed by the Danger of Unfair Prejudice.

In the present matter, Defendants have stipulated that they will not inquire into the immigration status of any non-party employee witnesses (or the immigration status of employee witnesses’ family members) at trial. (See Joint Stipulation ¶ 4, attached hereto

1 as Exhibit 1.) The Secretary submits that Defendants should also be precluded from in-
2 quiring as to the Social Security numbers of any non-party employee witnesses at trial,
3 as such questioning would serve as a backdoor way to inquire as to witnesses' immigra-
4 tion status, and any probative value derived therefrom would be substantially out-
5 weighed by the danger of unfair prejudice to the Secretary. See Fed. R. Evid. 403.

6 Courts have prohibited parties from inquiring as to witnesses' Social Security
7 numbers, as permitting such questioning would serve as a roundabout way of inquiring
8 as to witnesses' immigration status and would impliedly threaten employees from testi-
9 fying at trial. For example, in Flores v. Amigon, 233 F. Supp. 2d 462 (E.D.N.Y. 2002),
10 the district court issued a protective order preventing defendant's discovery of employ-
11 ees' immigration documents, Social Security numbers, and passports in a suit seeking
12 unpaid wages under the FLSA. The court held that such information was not relevant to
13 an FLSA claim for unpaid wages for work already performed, and the potential for
14 prejudice from disclosure far outweighed whatever minimal value the information might
15 have. Id. at 464. The court also noted that such disclosure would have an in terrorem
16 effect and would deter individuals from pursuing legitimate wage claims, thereby effec-
17 tively eliminating the FLSA as a means for protecting workers from exploitation and re-
18 taliation. Id. at 464 n.2; see also Galaviz-Zamora v. Brady Farms, Inc., 230 F.R.D. 499,
19 503 (W.D. Mich. 2005) (granting motion for protective order where defendant employer
20 sought discovery of, among other things, plaintiffs' immigration documents, Social Se-
21 curity cards, and visas).

22 The prejudicial nature of inquiries bearing on one's immigration status was co-
23 gently analyzed by the Ninth Circuit in NIBCO Inc. v Rivera, 364 F.3d 1057 (9th Cir.
24 2004), cert. denied, 544 U.S. 905 (2005). NIBCO was an employment discrimination
25 case in which a magistrate judge entered a protective order precluding an employer from
26 using discovery to inquire into the plaintiff's immigration status. The Ninth Circuit held
27 that such disclosures would severely chill employees' willingness to testify, because it
28 would allow employers to raise implicitly the threat of deportation and criminal prosecu-

tion every time a worker reported illegal practices. *Id.* at 1065. The Circuit held that inquiry into immigration matters unduly burdens employees and the public interest, and outweighs the employer's interest in discovering such information. *Id.* at 1066. *NIBCO* has direct application to the present matter because inquiry into employees' Social Security numbers impliedly implicates one's immigration status, and would thereby have a chilling effect on employees' willingness to testify. Such unwillingness would in turn severely prejudice the Secretary's ability to effectively enforce the FLSA and other federal labor laws.

III. The In Terrorem Effect of Questions Relating to Immigration Status, Including Questions Regarding Social Security Numbers, Bars Their Use In Testing a Witness' Credibility.

Moreover, because questions implicating immigration status are so highly charged and potentially intimidating to employees, courts have consistently refused to allow inquiry into immigration status for purposes of testing a witness' credibility. In *Galaviz-Zamora*, *supra*, 230 F.R.D. at 502, the court granted a protective order precluding an employer from using certain discovery – including inquiry as to employees' Social Security numbers – to test a witness' credibility. The court noted that “[w]hile a witness' credibility is arguably always at issue, such does not mean that unlimited exploration on the subject is permitted.” (Emphasis in original.) Indeed, a witness' credibility may be tested in a variety of ways without imposing an undue burden on that party. *See, e.g., Avila-Blum v. Casa De Cambio Delgado, Inc.*, 236 F.R.D. 190, 193 (S.D.N.Y. 2006) (highlighting other methods, not implicating immigration status, that employer could use to test witness credibility); *E.E.O.C. v. Bice of Chicago*, 229 F.R.D. 581, 583 (N.D. Ill. 2005) (same). Therefore, such inquiry in this case will have an in terrorem effect on non party employee witness in violation of the precedent discussed above.

IV. Conclusion.

For the foregoing reasons, the Secretary requests that the Court grant her motion in limine to preclude Defendants from inquiring about the Social Security numbers of

1 non-party employee witnesses at trial.

2
3 Dated: January 8, 2010

DEBORAH GREENFIELD,
Acting Deputy Solicitor

4
5 LAWRENCE BREWSTER,
6 Regional Solicitor

7 DANIEL CHASEK,
8 Associate Regional Solicitor

9 _____/s/_____
10 BORIS ORLOV, Attorney
11 Attorneys for the Plaintiff
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EXHIBIT 1

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9 Attorneys for *Defendants*,
10 Best Miracle Corporation, Thuy Thi Le, and Toan Van Nguyen

11 UNITED STATES DISTRICT COURT
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 HILDA L. SOLIS., Secretary of
14 Labor, United States Department
15 of Labor

16 Plaintiff,

17 vs.

18 BEST MIRACLE
19 CORPORATION, a
20 California corporation; THUY THI
21 LE, an individual; and TOAN
22 VAN NGUYEN, an individual

23 Defendants.

CASE NO. 08-cv-00998-CJC-MLG

24 **JOINT STIPULATION OF PARTIES
25 CONCERNING THE ADMISSIBILITY
26 AND USE OF CERTAIN EVIDENCE
27 AND THE DESIGNATION OF
28 EXPERT WITNESSES AT THE TIME
OF TRIAL**

IT IS HEREBY STIPULATED and agreed by and between Plaintiff, Hilda L. Solis,
Secretary of Labor, United States Department of Labor (hereafter Plaintiff), and Defendants Best
Miracle Corporation, Thuy Thi Le and Toan Van Nguyen (collectively "Defendants"), acting
through their respective counsel of record herein, as follows:

1. At the time of trial, Plaintiff, its counsel and agents, will refrain from referring to Defendants, either collectively or individually, as the owners or operators of a sweatshop.
2. At the time of trial, neither Plaintiff nor Defendants will produce to each other or introduce into evidence or offer for any other purpose any: witness, investigator or employee declarations, affidavits, statements, or notes, which were not produced before the date of the execution of this Stipulation. (For the purposes of this section the term "produced" shall mean all documents 1) exchanged between the parties during discovery; 2) attached as exhibits to the motion or opposition to the motion for summary adjudication (all exhibits filed under seal are explicitly excluded from this definition)).
3. At the time of trial, Plaintiff will not call any expert witnesses nor will she attempt to qualify any of her investigators or any of her other witness as experts in any field.
4. At the time of trial, neither Plaintiff nor Defendants will produce to each other or introduce into evidence or offer for any other purpose or question any witness about: an employee's immigration status, the immigration status of family members and any other matters related to or which could lead to information about their immigration status, country of origin, including but not limited to their dates of arrival in the United States; whether they hold a passport of any country; whether they hold a valid "green card;" and whether they ever obtained false working papers for themselves or for others.

This stipulation shall be incorporated into the Final Pretrial Order along with other stipulation that may be reached by the parties.

1 Dated: January ⁶~~5~~, 2009

DEBORAH GREENFIELD,

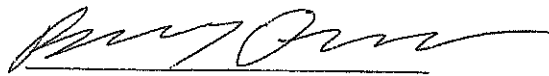
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LAWRENCE BREWSTER

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Associate Regional Solicitor

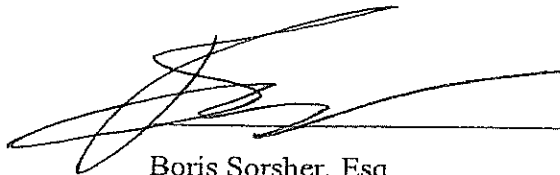


BORIS ORLOV, Trial Attorney

Attorneys for the Plaintiff

12 DATED: January 5, 2009

FELAHY & ASSOCIATES



Boris Sorsher, Esq.

Attorneys for Defendants

Best Miracle Corporation,

Thuy Thi Le, and

Toan Van Nguyen